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7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF ARIZONA**

9
 10 JONATHAN E. ROBINSON, a single man;
 11 and SALLY J. ROBINSON-BURKE, a
 12 married woman; individually and on behalf of
 13 a class of similarly situated individuals,
 14

15 Plaintiffs,
 16 vs.

17 GE MONEY BANK, a foreign corporation;
 18 WMC MORTGAGE CORP., a California
 19 corporation; WELLS FARGO BANK, N.A.,
 20 a California corporation, dba WELLS
 21 FARGO HOME EQUITY and dba WELLS
 22 FARGO HOME MORTGAGE, a division of
 23 WELLS FARGO BANK, N.A., a California
 24 corporation; AMERICA'S SERVICING
 25 COMPANY, a foreign corporation and
 division of WELLS FARGO BANK, N.A., a
 California corporation; MERSCORP, INC., a
 Virginia corporation; MORTGAGE
 ELECTRONIC REGISTRATION
 SYSTEMS, INC., a subsidiary of
 MERSCORP, Inc., a Delaware corporation;
 COUNTRYWIDE HOME LOANS, INC., a
 New York corporation; FEDERAL HOME
 LOAN MORTGAGE CORPORATION, a
 Virginia corporation; FEDERAL
 NATIONAL MORTGAGE ASSOCIATION,

Case No.: _____

CLASS ACTION COMPLAINT

1. **Violation of Truth in Lending Act, 15 U.S.C. § 1601, et seq.**
2. **Violation of Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq.**
3. **Violation of Home Ownership and Equity Protection Act, 15 U.S.C. §§ 1602(aa), 1610, and 1639**
4. **Violation of Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq.**
5. **Violation of Arizona Consumer Fraud Act, A.R.S. § 44-1522, et. seq.**
6. **Conspiracy to Commit Fraud and Conversion**
7. **Conspiracy to Commit Fraud Related to MERS System**
8. **Intentional Infliction of Emotional Distress**
9. **Injunctive Relief**
10. **Declaratory Relief**

1 a District of Columbia corporation; GMAC
2 MORTGAGE, L.L.C., a Delaware
3 corporation; NATIONAL CITY
4 MORTGAGE, a foreign company and a
division of NATIONAL CITY BANK, a
foreign company; J.P. MORGAN CHASE
5 BANK, N.A., a New York corporation;
CITIMORTGAGE, INC., a New York
6 corporation; HSBC MORTGAGE
CORPORATION, U.S.A., a Delaware
corporation; AIG UNITED GUARANTY
7 CORPORATION, a foreign corporation;
BANK OF AMERICA, N.A., a Delaware
8 corporation; and FIRST AMERICAN TITLE
INSURANCE CORPORATION, a California
9 corporation; JOHN AND JANE DOES I-X;
BLACK AND WHITE PARTNERSHIP I-X;
10 AND ABC CORPORATION I-X;

11
12 Defendants.
13

14 Plaintiffs, individually, and on behalf of a class of similarly situated individuals,
15 through undersigned counsel, for Plaintiffs' complaint against Defendants, alleges as
16 follows:
17

18 **JURISDICTION**
19

20 1. Jurisdiction is founded upon 28 U.S.C. § 1331, as this matter presents issues of
21 federal law, and this court has jurisdiction over the subject matter of this action pursuant to
22 the laws of the United States, including, but not limited to, 15 U.S.C. § 1601, *et seq.*; 12
23 U.S.C. § 2614, *et seq.*; 15 U.S.C. § 1692 and 15 U.S.C. § 1640.
24

25 2. This court also has jurisdiction pursuant to 28 U.S.C. § 1332 based on
diversity of citizenship, as Plaintiffs are Arizona residents, Defendant WMC Mortgage

1 Corporation (hereinafter referred to as "WMC Mortgage Corp.") is a California corporation
2 and a subsidiary of GE Money Bank; Defendant GE Money Bank (hereinafter "GE
3 Money") is a Delaware corporation; Defendant Wells Fargo Bank, N.A. dba Wells Fargo
4 Home Equity, Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.,
5 (hereinafter collectively referred to as "Wells Fargo") is a California corporation;
6 Defendant America's Servicing Company (hereinafter referred to as "ASC") is based in
7 Iowa and is a Wells Fargo entity operating under a fictitious name based in Iowa;
8 Defendant MERSCORP, Inc. is a Delaware corporation; Defendant Mortgage Electronic
9 Registration Systems, Inc. ("MERS") is a Delaware corporation and a wholly-owned
10 subsidiary of Defendant MERSCORP, Inc.; and Defendants Federal Home Loan Mortgage
11 Corporation, Federal National Mortgage Association, GMAC Mortgage, L.L.C., National
12 City Mortgage, J.P. Morgan Chase Bank, N.A., CitiMortgage, Inc., HSBC Mortgage
13 Corporation, U.S.A., AIG United Guaranty Corporation, and First American Title
14 Insurance Corporation, are foreign corporations, and because this matter is a class action
15 with claims having a value in excess of \$5,000,000.00.

19 3. This court has pendent jurisdiction over Plaintiff's state law claims pursuant to
20 28 U.S.C. § 1367.

21 4. Venue over this matter is appropriate in this court pursuant to 28 U.S.C. §
22 1391(b). The acts complained of occurred, in substantial part, in the State of Arizona, the
23 property subject to this action is situated in Arizona, the owners of the property reside in
24
25

1 Arizona, and at all relevant times material hereto, the Defendants are or were doing
2 business in Arizona.

3 **PARTIES AND STANDING**

4 5. Plaintiff Jonathan Edward Robinson, formerly Jonathan Edward Hernandez,
6 pursuant to an official name change dated September 25, 2008, is a resident of Pima
7 County, Arizona.

8 6. Plaintiff Sally Jane Robinson-Burke, formerly Sally Jane Hernandez,
9 pursuant to an official name change dated September 25, 2008, is a resident of Pima
10 County, Arizona and is the natural mother of Plaintiff Jonathan Robinson. (Plaintiffs Sally
11 Robinson Burke and Jonathan Robison will be collectively referred to herein as
12 "Robinson").

14 7. At all times relevant and material hereto, Plaintiffs maintained their primary
15 residence in Pima County, Arizona located at 7095 North Tula Lane, Tucson, Arizona
16 85743 (hereinafter referred to as the "Residence").
17

18 8. Upon information and belief, Defendant WMC Mortgage Corp. was a
19 California corporation and is the subsidiary of GE Money, a foreign corporation who is
20 authorized to do business in, and doing business in, Pima County, Arizona.
21

22 9. Upon information and belief, Defendant GE Money is a Delaware
23 corporation authorized to do business in, and doing business in, Pima County, Arizona.
24

25 10. Upon information and belief, Defendant Wells Fargo is a California
corporation authorized to do business in, and doing business in, Pima County, Arizona.
26

1 11. Upon information and belief, ASC is a Wells Fargo entity based in Iowa and
2 operating under a fictitious name. ASC was authorized to do, and doing business in, Pima
3 County, Arizona.

4 12. Upon information and belief, Defendant MERSCORP, INC. is a Delaware
5 corporation doing business in Pima County, Arizona through its subsidiary, Defendant
6 MERS, Inc., a Delaware corporation. Upon information and belief, MERSCORP, INC.
7 was a director of MERS, Inc. (Defendants MERSCORP, INC. and MERS, Inc. are
8 hereinafter collectively referred to as "MERS.")

9 13. Upon information and belief, Defendant Federal Home Loan Mortgage
10 Corporation (hereinafter referred to as "Freddie Mac") was a Virginia corporation doing
11 business in Arizona, and was a creator, originator and principal shareholder in MERS.
12 Upon information and belief, Freddie Mac has, through its agents and employees, a
13 chartered seat on the MERS board of directors.

14 14. Upon information and belief, Defendant Federal National Mortgage
15 Association (hereinafter referred to as "Fannie Mae") is a District of Columbia corporation
16 doing business in Arizona, and at all times material hereto, was a creator, originator and
17 principal shareholder of MERS and a member of the MERS system. Upon information and
18 belief, Defendant Fannie Mae has, through its agents and employees, a chartered seat on
19 the MERS board of directors.

20 15. Upon information and belief, Defendant GMAC Mortgage, L.L.C. was a
21 Delaware corporation doing business in Arizona, and at all times material hereto, was a

1 member of the MERS system described herein. Upon information and belief, Defendant
2 GMAC Mortgage, L.L.C., through its affiliate or subsidiary, GMAC Residential Funding
3 Corporation, was a creator, originator and principal shareholder in MERS and a member of
4 the MERS system. Defendant GMAC Mortgage, L.L.C. through its employees and/or
5 agents employed by its affiliate or subsidiary, GMAC Residential Holding Corp., has a
6 chartered seat on the MERS board of directors.
7

8 16. Upon information and belief, Defendant National City Mortgage, a division
9 of National City Bank, was a foreign company doing business in Arizona, and at all times
10 material hereto was a member of the MERS system described herein. Upon information
11 and belief, Defendant National City Mortgage has, through its agents and employees, a
12 chartered seat on the MERS board of directors.
13

14 17. Upon information and belief, Defendant J.P. Morgan Chase Bank, N.A. was
15 a New York corporation doing business in Arizona and, at all times material hereto, was a
16 member in the MERS system described herein. Upon information and belief, J.P. Morgan
17 Chase Bank, N.A., through its affiliate or subsidiary, Chase Home Mortgage Corporation
18 of the Southeast, was a creator, originator and principal shareholder in MERS, and has
19 through its employees and/or agents employed by its affiliate, J.P. Morgan Chase Co. a
20 chartered seat on the MERS board of directors.
21

22 18. Upon information and belief, Defendant CitiMortgage, Inc. was a New York
23 corporation doing business in Arizona and, at all times material hereto, was a member in
24 the MERS system described herein and a principal shareholder of MERS.
25

1 19. Upon information and belief, Defendant HSBC Mortgage Corporation,
2 U.S.A. was a Delaware corporation doing business in Arizona, and at all times material
3 hereto, was a member of the MERS system described herein. Upon information and belief,
4 HSBC Mortgage Corporation, through its affiliate or subsidiary HSBC Finance Corp., was
5 a creator, originator and principal shareholder of MERS.
6

7 20. Upon information and belief, Defendant AIG United Guaranty Corporation
8 was foreign corporation doing business in Arizona and, at all times material hereto, was a
9 creator, originator and shareholder of MERS and/or a member of the MERS system
10 described herein. Upon information and belief, AIG United Guaranty Corporation has,
11 through its agents and employees, a chartered seat on the MERS board of directors.
12

13 21. Upon information and belief, Defendant First American Title Insurance
14 Company was a California corporation doing business in Arizona, and at all times material
15 hereto, was a creator, originator and principal shareholder in MERS.
16

17 22. Upon information and belief, Defendant Wells Fargo, at all times material
18 hereto, was a member of the MERS system described herein and a creator, originator and
19 principal shareholder of MERS.
20

21 23. Upon information and belief, Defendant GE Money, at all times material
22 hereto, was a member of the MERS system described herein.
23

24 24. Upon information and belief, Defendant Countrywide Home Loans, Inc.
25 (“Countrywide”) was a New York corporation authorized to do business in and doing
business in Pima County, Arizona, and at all times material hereto was a member of the
26

1 MERS system described herein and a creator, originator and principal shareholder in
2 MERS.

25. Defendants John and Jane Does I-X are fictitious names for affiliates, agents,
4
or successors or assigns of the named Defendants whose true names are not known to
5 Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint to assert the
6 true names of these Defendants at such times as their true names are discovered to assert
7 this complaint against such parties with the same effect as if such names had been set forth
8 herein.
9

11 26. Defendants Black and White Partnership I-X are fictitious names for
12 affiliates, partners, or successors or assigns of Defendants whose true names are not known
13 to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint at such
14 times as their true names are discovered to assert this complaint against such parties with
15 the same effect as if such names had been set forth herein.

17 27. Defendants ABC Corporation I-X are fictitious names for affiliates, partners,
18 or successors or assigns of Defendants whose true names are not known to Plaintiff at this
19 time. Plaintiffs will seek leave of court to amend this complaint to assert the true names of
20 these Defendants at such times as their true names are discovered to assert this complaint
21 against such parties with the same effect as if such names had been set forth herein.

GENERAL ALLEGATIONS

24 28. On or about November 14, 2005, Plaintiff Jonathan Robinson obtained
25 financing for the Residence by executing a Promissory Note and Deed of Trust with WMC

1 Mortgage Corp., a California-based mortgage unit of GE Money, as the Lender. The Deed
2 of Trust listed MERS, Inc. as an alleged “nominee” for the Lender and Lender’s successors
3 and assigns. MERS, Inc., was also listed as the purported beneficiary under the Deed of
4 Trust.
5

6 29. The loan was in the form of two (2) Promissory Notes totaling \$625,000.00,
7 and each secured by a separate Deed of Trust. The first Promissory Note was in the
8 amount of \$500,000.00 (hereinafter “First Note”), and the Second Promissory Note equaled
9 \$125,000.00 (hereinafter “Second Note”) (hereinafter the First Note and Second Note shall
10 be collectively referred to as the “Notes”). The Defendants represented to Plaintiff
11 Jonathan Robinson that the loan funded one hundred percent (100.0%) of the property’s
12 appraised value.
13

14 30. Prior to executing the Promissory Notes and the Deeds of Trust, Plaintiff
15 Jonathan Robinson applied for the loan over the telephone through Andy Dunphy of Ace
16 Mortgage Funding, who, upon information and belief, was acting as the agent of
17 Defendants WMC Mortgage Corp. and/or GE Money.
18

19 31. Plaintiff Jonathan Robinson did not sign the application at the time it was
20 filled out by Mr. Dunphy, nor was he provided a copy of the application to review prior to
21 it being submitted to WMC Mortgage Corp. and/or GE Money for approval.
22

23 32. At the closing of the loan on November 14, 2005, Cathy Kerege of First
24 American Title Company, acting as escrow agent for the parties, represented to Plaintiff
25 Jonathan Robinson that the annual percentage rate on the First and Second Notes would

1 equal 7.60% and 10.20%, respectively. Furthermore, Ms. Kerege represented that the
2 monthly payments for the First and Second Note would equal to \$3,237.36 and \$1,115.48,
3 respectively.

4 33. Plaintiff Jonathan Robinson was not required to provide any income
5 verification to demonstrate his ability to repay the loan. Upon information and belief,
6 Plaintiff Jonathan Robison's credit score and the appraisal of the Residence were the only
7 criteria used by WMC Mortgage Corp. and its affiliates to qualify Plaintiff Jonathan
8 Robinson for the refinance loan that is the subject of this action.

9 34. The First Note included an "Adjustable Rate Rider," whereby the initial
10 "teaser" interest rate was set at 1.50% from the Closing Date until December 1, 2007
11 (hereinafter the "Change Date"). The interest rate would be subject to change on the first
12 Change Date and then on the first day of each successive sixth month period thereafter.

13 35. Upon each successive Change Date, the adjusted interest rate was calculated
14 by adding 6.750% to the applicable six-month London Interbank Offered Rate (hereinafter
15 "LIBOR"). Over the term of the loan, the interest rate was limited to a maximum ceiling of
16 14.10% and a minimum floor of 7.60%.

17 36. The First Note contained a prepayment penalty that required six months of
18 advanced interest due at the applicable rate in effect at the time of the prepayment, if a
19 prepayment of principal exceeded twenty percent of the original principal balance of the
20 First Note within the first twenty-four (24) months over the life of the loan.
21
22
23
24
25

1 37. Plaintiff Jonathan Robinson's initial monthly payment on the First Note was
2 set at \$3,237.36 for the first twenty-four (24) months. Thereafter, that payment was
3 expected to rise to \$4,460.86 for six (6) months, then settling at to \$4,714.70 where it
4 would remain until maturity on December 1, 2035. This payment schedule negatively
5 amortized the First Note over the first forty-two (42) months of the life of the loan.
6

7 38. When applying for the loan, Defendants and their agents represented to
8 Plaintiff Jonathan Robinson that he would be able to refinance the Residence at a low rate
9 before the initial "teaser" rate was set to expire.
10

11 39. Plaintiff Jonathan Robinson was led to believe by the Defendants, their
12 agents, representatives and employees, that he was being placed into a loan which he could
13 afford to repay based on his income. Defendants and their agents, employees and
14 representatives willfully disregarded Plaintiff Jonathan Robinson's income in determining
15 his qualifications for the loan.
16

17 40. Plaintiffs Jonathan Robinson, Sally Robinson-Burke and her husband, John
18 Robinson, took title to the Residence under a Deed of Trust in the form of joint tenants
19 with rights of survivorship.
20

21 41. GE Money, through its subsidiary WMC Mortgage Corp., failed to provide
22 each Plaintiff with the disclosures as required by the Truth-in-Lending Act (hereinafter
23 "TILA").
24

25 42. Plaintiff Sally Robinson-Burke was not provided the required number of
copies of the Right to Cancel Notice as required by Regulation Z of TILA.

1 43. Plaintiff Sally Robinson-Burke and her husband, John Robinson, assisted in
2 making the monthly payments on the Residence.

3 44. Faced with an exorbitant prepayment penalty, Plaintiffs contacted ASC, the
4 loan servicer, about modifying the First Note in or around October 30, 2007.
5

6 45. After receiving no communications from ASC regarding the status of the loan
7 modification application submitted two months prior, Plaintiffs contacted ASC in or around
8 January 2008. Plaintiffs were informed that because no income verification paperwork was
9 submitted with her application for modification, its approval was delayed. Thereafter, the
10 Plaintiffs immediately mailed the additional information to ASC as directed.
11

12 46. On or around February 6, 2008, Plaintiffs received a Notice of Trustee's Sale
13 scheduling the sale of the Residence for May 23, 2008. Upon receiving the Notice of
14 Trustee Sale, Plaintiffs immediately contacted ASC to determine the status of the loan
15 modification. ASC's agent, James Battle, informed Plaintiffs that the loan modification
16 was approved subject to the receipt of additional paperwork from the title company.
17

18 47. In or around March 2008, Plaintiffs had still not received confirmation as to
19 whether or not their loan modification application had been approved. Thereafter,
20 Plaintiffs contacted Mr. Battle at ASC, who again assured Plaintiffs that the modification
21 was underway, but that ASC was still waiting to receive all of the necessary paperwork.
22

23 48. In or around April 2008, Plaintiffs received notice that their loan
24 modification application was denied. Plaintiffs contacted ASC, which put Plaintiffs in
25 direct contact with Wells Fargo Bank. In order to stop the Trustee's Sale from occurring

1 as scheduled, Wells Fargo required that Plaintiffs enter into a Forbearance Agreement to
2 permit additional time for Plaintiffs to gather their assets and bring their loan current.
3

4 49. On or around June 1, 2008, the Plaintiffs sent \$3,500.00 to ASC as servicer
5 for Wells Fargo Bank, pursuant to the executed Forbearance Agreement, in order to prevent
6 the Residence being sold at trustee's sale.
7

8 50. In or around June 2008, the purported second lender agreed to subordinate to
9 the modified loan on the First Note. As a result, the Plaintiffs resubmitted the loan
10 modification application on or about August 1, 2008.
11

12 51. On or about August 5, 2008, ASC informed Plaintiffs that the modification
13 on the First Note has been denied.
14

15 52. In approximately October 2008, Plaintiffs promptly exercised their right to
16 rescind the loan within the allowed three-year period as provided by TILA by sending
17 notice to Wells Fargo dba ASC.
18

19 53. ASC, on behalf of Wells Fargo, denied the demand for rescission, contending
20 that Wells Fargo was merely the loan servicer, not the originator, and therefore had no
21 authority to rescind the loan.
22

23 54. ASC, on behalf of Wells Fargo, has currently scheduled a trustee sale of the
24 Residence for May 1, 2009.
25

26
FIRST CLAIM FOR RELIEF
27 (Violation of the Truth in Lending Act,
28 15 U.S.C. § 1601, *et seq.* and Regulation Z, 12 C.F.R. § 201, *et seq.*)
29 (As to Defendants GE Money, WMC Mortgage Corp. and Wells Fargo)
30

1 55. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
2 set out in this claim.

3 56. As defined in 15 U.S.C.A. § 1602 and 12 C.F.R. § 226.2, the transaction
4 between Plaintiff Jonathan Robinson and Defendant WMC Mortgage Corp. was a “credit
5 sale.”

6 57. As defined in 15 U.S.C. § 1602, Plaintiff Jonathan Robinson was a
7 “consumer,” and Defendant WMC Mortgage Corp. was a “creditor.”

8 58. Pursuant to 15 U.S.C.A. § 1638(b)(1) and 12 C.F.R. § 226.17, Defendant
9 WMC Mortgage Corp. was required to make certain specified disclosures to Plaintiff
10 Jonathan Robinson before the consummation of the credit transaction.

11 59. Pursuant to 12 C.F.R. § 226.23, Defendant WMC Mortgage Corp. was
12 required to furnish each individual holding an interest in the Residence with two (2)
13 completed copies of the Right to Cancel notice.

14 60. Upon information and belief, Defendant WMC Mortgage Corp. violated 15
15 U.S.C. § 1638 by improperly and/or inadequately disclosing one or more of the following
16 items to Plaintiffs:

- 21 a. The annual percentage rate;
- 22 b. The finance charge;
- 23 c. The amount financed;
- 24 d. The total number of payments;
- 25 e. The payment schedule;

- 1 f. Whether the loan has a demand feature;
- 2 g. Whether the loan has a variable rate feature, and if so, to make
- 3 disclosure about the variable rate feature;
- 4 h. Whether the borrower may be entitled to a refund of a portion of the
- 5 finance charges;
- 6 i. Whether the loan is subject to a prepayment penalty, and if so, to make
- 7 disclosure about the prepayment penalty terms.

9
10 61. Upon information and belief, fees were charged to Plaintiff Jonathan
11 Robinson by Defendant WMC Mortgage Corp., without being properly disclosed pursuant
12 to 15 U.S.C. § 1605 and Regulation Z of Section 226.4.

13 62. Upon information and belief, with regards to the loans obtained by Plaintiff
14 Jonathan Robinson, Defendant WMC Mortgage Corp. applied the annual percentage rate
15 based on improperly calculated and disclosed amounts and in direct violation of 15 U.S.C.
16 § 1601, *et seq.* and Regulation Z Sections 226.18(c), 18(d), and 22.

17 63. Pursuant to the Truth-in-Lending Act, borrowers must be provided with
18 notice of their right to rescind the transaction at the time of closing. Upon information and
19 belief, Defendant WMC Mortgage Corp., through its agents and affiliates, failed to furnish
20 Plaintiffs with the proper number of Right to Cancel notices pursuant to 15 U.S.C. § 1635
21 and 12 C.F.R. § 226.23.

22 64. Upon information and belief, Plaintiff Sally Robinson-Burke was not given
23 the requisite two (2) copies of the Right to Cancel notice.

65. Pursuant to 15 U.S.C.A. § 163(b) and 12 C.F.R. § 226.3, Defendant Wells Fargo Bank dba ASC wrongfully denied Plaintiffs' rescission of the transaction during the three-year allowed time period.

66. As a result of Defendant's violations as set forth herein, Plaintiffs are entitled to damages as set forth below.

67. Upon information and belief, Defendant WMC Mortgage Corp., through its agents and affiliates, fraudulently misrepresented and concealed the true facts related to the items subject to disclosure to Plaintiff Jonathan Robinson, and Plaintiff Jonathan Robinson did not discover the Defendant's failure to make such disclosures pursuant to 15 U.S.C. § 1638 until one (1) year within the filing of this Complaint.

SECOND CLAIM FOR RELIEF

**(Violation of Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.*)
(As to Defendants GE Money, WMC Mortgage Corp. and Wells Fargo)**

68. Plaintiffs incorporate each and every paragraph of this Complaint as if fully set out in this claim.

69. Defendant GE Money, through its agent WMC Mortgage Corp., is a
“mortgage lender” with deposits or accounts insured by a federal agency and/or a lender
that is regulated by the federal government, and therefore is subject to the Real Estate
Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601, *et seq.*

24 70. The loan to Plaintiff Jonathan Robinson described herein is a federally related
25 mortgage loan subject to 12 U.S.C. § 2601, *et seq.*

1 71. Plaintiff Jonathan Robinson is a consumer and a member of the class of
2 consumers subject to protection under 12 U.S.C. § 2601, *et seq.*

3 72. Pursuant to 12 U.S.C. § 2601, *et seq.*, Defendant WMC Mortgage Corp. was
4 required to provide Plaintiff Jonathan Robinson with a uniform settlement statement, which
5 must clearly and conspicuously itemize all charges imposed upon the borrower and all
6 charges imposed upon the seller in connection with the closing of the loan.

7 73. Pursuant to 12 U.S.C. § 2604, Defendant WMC Mortgage Corp. was also
8 required to provide Plaintiff Jonathan Robinson with a special information booklet, which
9 was to contain in "clear and concise language" a description and/or explanation of the
10 following:

- 13 a. Each cost associated with a real estate settlement;
- 14 b. The uniform settlement form required by RESPA (with a sample copy
15 of the form);
- 16 c. The nature and purpose of escrow accounts used in connection with
17 real estate transactions;
- 18 d. The choices available to residential real estate purchasers when they
19 require necessary services incident to a real estate transaction;
- 20 e. Unfair practices and unreasonable or unnecessary charges that a
21 prospective purchaser should avoid in connection with a real estate settlement.

1 74. Pursuant to 12 U.S.C. § 2604, Defendant WMC Mortgage Corp. was required
2 to include a “good faith estimate of the amount or range of charges” for settlement services
3 with the special information booklet described above.

4 75. Pursuant to 12 U.S.C. § 2604, Defendant WMC Mortgage Corp. was required
5 to provide Plaintiff Jonathan Robinson a good faith estimate and the special information
6 booklet no later than three (3) business days after Defendant WMC Mortgage Corp.
7 received the loan application described herein.

8 76. Defendant WMC Mortgage Corp. was required to inform Plaintiff Jonathan
9 Robinson at the time of application, whether the servicing of the loan could be assigned,
10 sold, or transferred during the life of the loan.

11 77. Defendants WMC Mortgage Corp. and ASC were required to notify Plaintiff
12 of the assignment, sale, or transfer of the loan in writing at least fifteen (15) days before the
13 event or at the time of settlement.

14 78. Pursuant to 12 U.S.C. § 2607(a), Defendant WMC Mortgage Corp. was
15 prohibited from paying any “fee, kickback, or thing of value” to any person as part of the
16 real estate settlement service involving the loan described herein.

17 79. Defendant WMC was required to disclose any “controlled business
18 arrangements” as defined in 12 U.S.C. § 2602 to Plaintiffs.

19 80. Upon information and belief, Defendant WMC Mortgage Corp. violated
20 RESPA by failing to provide Plaintiff Jonathan Robinson with the required disclosures
21 described above within the required time periods provided for by the Act. Upon
22

1 information and belief Defendant WMC Mortgage Corp., through its agents and affiliates
2 provided Plaintiff Jonathan Robinson with inaccurate settlement statements and good faith
3 estimates prior to the closing of the transaction.
4

5 81. Upon information and belief, Defendant WMC Mortgage Corp. violated the
6 RESPA by failing to disclose a “controlled business arrangements” to Plaintiff Jonathan
7 Robinson.
8

9 82. Upon information and belief, Defendant WMC Mortgage Corp. violated the
10 RESPA by charging Plaintiff Jonathan Robinson unreasonably high fees for real estate
11 settlement services.
12

13 83. Upon information and belief, Defendant WMC Mortgage Corp fraudulently
14 misrepresented and concealed from Plaintiff Jonathan Robinson the true facts related to the
15 items subject to disclosure, and Plaintiff Jonathan Robinson did not discover Defendant's
16 failure to make the required disclosures pursuant to 12 U.S.C. §§ 2601 and 2604 within one
17 (1) year of the filing of this Complaint.
18

19 84. Based on Defendant's violations as described herein, Plaintiff is entitled to
20 damages under 12 U.S.C. §§ 2607 and 2608, and to claim damages for emotional distress
21 according to proof.
22

23 85. Based on Defendant's violations as described herein, Defendant WMC
24 Mortgage Corp. is liable to Plaintiff in an amount equal to three (3) times the amount of
25 charges paid by Plaintiffs for “settlement services.”
26

THIRD CLAIM FOR RELIEF
**(Violation of Home Ownership and
Equity Protection Act, 15 U.S.C. §§ 1602(aa), 1610, and 1639)**
(As to Defendants GE Money, WMC Mortgage Corp. and Wells Fargo)

86. Plaintiffs incorporate each and every paragraph of this Complaint as if fully set out in this claim.

87. In 1994, Congress enacted the Home Ownership Equity Protection Act (hereinafter “HOEPA”) as codified in 15 U.S.C. § 1639 et seq. with the intention of protecting homeowners from predatory lending practices targeting vulnerable consumers. HOEPA requires lenders to make certain defined disclosures and prohibits certain terms from being included in home loans. In the event of noncompliance, HOEPA imposes civil liability for rescission plus statutory and actual damages.

88. As defined in 15 U.S.C.A. § 1602(aa), the transaction between Plaintiff Jonathan Robinson and Defendant GE Money through its subsidiary WMC Mortgage Corp. was a “mortgage.” Plaintiff was a “consumer,” and Defendant GE Money, through its subsidiary WMC Mortgage Corp., was a “creditor.”

89. Pursuant to 15 U.S.C.A. § 1639, Defendant GE Money through its subsidiary WMC Mortgage Corp. was required to make certain specified disclosures as listed below “not less than three (3) business days prior to the consummation of the transaction.”

90. Defendant GE Money through it subsidiary WMC Mortgage Corp., violated HOEPA by numerous acts, material omissions, and a pattern of fraudulent concealment, including but not limited to the violation 15 U.S.C. § 1639 and by improperly, inadequately, or failing to disclose one or more of the following items:

- 1 a. The specific disclosure, in a “conspicuous type size,” that “**You are**
2 **not required to complete this agreement merely because you have received these**
3 **disclosures or have signed a loan application;**”
4
- 5 b. The specific disclosures, in a “conspicuous type size,” that “**If you**
6 **obtain this loan, the lender will have a mortgage on your home. You could lose your**
7 **home, and any money you have put into it, if you do not meet your obligations under the**
8 **loan;**”
9
- 10 c. The annual percentage rate;
11
- 12 d. The amount of the regular monthly payment if the interest rate was a
fixed rate; or
13
- 14 e. The annual percentage rate of the loan, the amount of the regular
monthly payment, statement that the interest rate and monthly payment may increase, the
amount of the maximum monthly payment if the transaction was other than a fixed interest
rate transaction; and the amount financed.
15

16 91. Defendant GE Money, through its subsidiary WMC Mortgage Corp. violated
17 15 U.S.C. § 1639 by making a loan to Plaintiff that included one or more of the following
18 terms:
19

- 20 a. A non-exempt prepayment penalty that was not within the exception
21 contained in 15 U.S.C. § 139 (c)(2)(A)-(D);
22
- 23 b. A “balloon payment” as defined in 15 U.S.C. 1639(e), which was due
24 on a loan that had a term of less than five (5) years;
25

1 c. Negative amortization as defined in 15 U.S.C. § 1639(f).

2 92. Defendant GE Money through its subsidiary WMC Mortgage Corp. violated
3 HOEPA by engaging in a pattern or practice of extending credit to Plaintiffs and other
4 similarly situated individuals without regard to their ability to repay in violation of 15
5 U.S.C. §1639(h).
6

7 93. The initial monthly payment on the mortgage was \$4,442.84 for twenty-four
8 (24) months, equaling approximately 443.0% percent of Plaintiff's monthly income.
9

10 94. With respect to Plaintiff Jonathan Robinson, Defendant WMC Mortgage
11 Corp. made a loan regulated by 15 U.S.C. §§ 1602(aa) and 1639 without making the
12 disclosures as set forth in paragraph 90(a) and 90(b) above.

13 95. Additionally, the First Note included provisions for prepayment penalties and
14 the payments under the First Note resulted in negative amortization.
15

16 96. Upon information and belief, Wells Fargo, as assignee or purchaser of the
17 loan, is subject to liabilities arising out of WMC Mortgage Corp.'s violation of the
18 disclosure requirements of HOEPA.
19

20 97. As a result of Defendants' violations as set forth herein, Plaintiff is entitled to
21 damages as set forth below, including, but not limited to statutory damages pursuant to 15
22 U.S.C. § 1640.
23

24 98. Upon information and belief, Defendants GE Money and WMC Mortgage
25 Corp., through their agent(s), fraudulently misrepresented and concealed the true facts
related to the items subject to disclosure to Plaintiff, and Plaintiff discovered the

1 Defendants' failure to make the disclosures pursuant to 15 U.S.C.A. § 1639 within one (1)
2 year of the filing of this Complaint.

3
4 **FOURTH CLAIM FOR RELIEF**

5 **(Violation of the Fair Debt Collection Practices Act,
6 15 U.S.C. § 1692, et. seq.)**

7 **(As to Defendant Wells Fargo, America's Servicing Company, and First American
Title Insurance Company)**

8 99. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
set out in this claim.

10 100. The making of a loan, such as the loan made to Plaintiff and referred to
herein, is a "real estate related transaction" subject to the Federal Fair Housing Act.

11 101. At all times material hereto, Plaintiff Jonathan Robinson was a "consumer"
12 as defined in 15 U.S.C. § 1692(a)(3), as Plaintiff was obligated pursuant to the loan
13 transaction described herein to pay a debt to Defendant under the Note and Deed of Trust
14 described herein.

15 102. Defendant Wells Fargo was a "debt collector" as defined in 15 U.S.C. §
16 1692(a)(6), as Defendant utilized the name of ASC, which was a name other than its own,
17 and was a third party who was attempting to collect a debt on behalf of Defendant Wells
18 Fargo. ASC was an affiliate of Defendant Wells Fargo.

19 103. On or about December 3, 2008, Defendant Wells Fargo, operating as ASC,
20 issued a Notice of Trustee's Sale. Upon information and belief, Defendant Wells Fargo
21 was not the holder of the note, and the note had not been assigned.
22
23
24
25

1 104. Upon information and belief, Defendant Wells Fargo, operating as ASC,
2 improperly issued the Notice of Trustee's Sale, thereby violating 15 U.S.C. 1692(f)(6),
3 which prohibits taking or threatening to take non-judicial action to effect dispossession of
4 property if there is no present right to possession of the property claimed as collateral
5 through an enforceable security interest.
6

7 105. Defendants, and each of them, used false, deceptive and misleading
8 representations to Plaintiff by failing to disclose any transfers in connection with the Note,
9 in violation of 15 U.S.C. 1692(f).
10

11 106. Upon information and belief, Defendants sent false, deceptive and misleading
12 correspondence and coupons to Plaintiffs that misstated the amount of the payments owed
13 and the monetary amount needed to bring the mortgage current.
14

15 107. Upon information and belief, Defendants knowingly misrepresented to
16 Plaintiffs that Plaintiffs would be offered a loan modification opportunity tailored to fit
17 their unique financial situation and permit them to stay in their Residence.
18

19 108. Defendant Wells Fargo, operating as ASC, improperly published that
20 Plaintiff's property was in foreclosure and that Defendant Wells Fargo was a proper party
21 to initiate foreclosure.
22

23 109. Defendants' violation of the Federal Debt Collection Practices Act as alleged
24 herein has caused Plaintiffs to suffer damages, including, but not limited to, financial
25 losses, damage to reputation, embarrassment, humiliation, and emotional distress, and
Plaintiffs have incurred attorneys' fees and costs in this matter.
26

110. Defendants' violation of the Federal Debt Collection Practices Act alleged herein was reckless, willful and wanton, entitling Plaintiffs to actual and statutory damages.

FIFTH CLAIM FOR RELIEF

(Violation of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521, et seq.)

(As to Defendants GE Money, WMC Mortgage Corp.)

111. Plaintiffs incorporate each and every paragraph of this Complaint as if fully set out in this claim.

112. A.R.S. § 44-1522 prohibits the use of any “deceptive act or practice” in connection with real estate transactions.

113. A.R.S. § 44-1522(B) permits interpretations of 15 U.S.C.A. §§ 44, 52, and
55(a)(1), the Federal Trade Commission Act, to be used as a guide in interpreting the term
“deceptive.” Interpretations of the term include representations that have a “tendency and
capacity” to convey misleading impressions to consumers even though interpretations that
would not be misleading are also possible. *Chrysler Corp. v. FTC*, 561 F.2d 357, 363
(D.C.Cir. 1977). In evaluating the representations, the test is whether the least
sophisticated individual would be misled. *Exposition Press, Inc. v. FTC*, 295 F.2d 869, (2d
Cir. 1961), *cert. denied* 370 U.S. 917, 82 S.Ct. 1544 (1962).

114. Upon information and belief, Defendant WMC Mortgage Corp. used deception, false promises, and misrepresentations regarding the terms of the loan offered to Plaintiff by misrepresenting, concealing, or omitting the terms of the loan, including, but not limited to, the interest rate, the payments to be made under the loan, Plaintiff's ability to qualify for the loan, and Plaintiff's ability to refinance the loan in the future. Such facts

1 were material in that Defendants knew, or should have known, that Plaintiff would rely
2 upon Defendant's representations in entering into the loan as alleged herein.

3 115. Upon information and belief, Defendant WMC Mortgage Corp. made a loan
4 to Plaintiff Jonathan Robinson without making a commercially reasonable determination of
5 Plaintiff's ability to repay the loan. Upon information and belief, Defendant knew, or
6 should have known, that Plaintiff would be incapable of making loan payments as required
7 by the terms of the loan based upon Plaintiff's income.

8 116. Defendant WMC omitted and concealed the magnitude of Plaintiff's risk of
9 losing the home.

10 117. Plaintiff Jonathan Robinson relied upon Defendant WMC Mortgage Corp.'s
11 representations concerning the terms of the loan his ability to repay the loan when entering
12 the loan agreement.

13 118. WMC Mortgage Corp.'s deceptive practices misled Plaintiff into believing
14 that he would be able to refinance the loan before the initial "teaser" rate was set to expire.

15 119. Plaintiffs learned of Defendants' violations of A.R.S. § 44-1522 within one
16 (1) year of filing this complaint.

17 120. As a proximate result of the violations stated above, Defendants are liable to
18 Plaintiffs for statutory damages according to the Arizona Consumer Fraud Act, for actual
19 damages (including emotional distress) according to proof, and attorneys' fees and costs.

20 121. Moreover, the conduct of Defendants in violation of the Arizona Consumer
21 Fraud Act was so contemptible and egregious that Plaintiffs are entitled to punitive
22

1 damages in an amount appropriate to punish Defendants and deter others from engaging in
2 similar conduct.

3 **SIXTH CLAIM FOR RELIEF**

4 **(Conspiracy to Commit Fraud and Conversion)**

5 **(As to Defendants WMC Mortgage Corporation GE Money, Wells Fargo, and MERS)**

6 122. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
7 set out in this claim.

8 123. In connection with the application and consummation of the loans that are the
9 subject of this action, Defendants WMC Mortgage Corp., GE Money, Wells Fargo, ASC
10 and MERS conspired and formed an association designed to deprive Plaintiffs of their
11 property through fraud and misrepresentation which would result in Plaintiff entering a
12 loan for which Plaintiff was not qualified.

14 124. Upon information and belief, Defendants intended that the loan would be
15 packaged and sold on the secondary market, resulting in a substantial profit to the
16 Defendants.

18 125. Defendants knew prior to their origination and subsequent transfer of the
19 loan, that Plaintiff Jonathan Robinson was not qualified for the loan. Furthermore,
20 Defendants knew, or should have known, that Plaintiff would rely, and did rely, on
21 Defendants' representations as alleged herein related to Plaintiff's ability to repay the loan
22 or to refinance the loan.

24 126. Defendants' legal objective of packaging and selling the loan was
25 accomplished by illegal means in procuring the loan because of Defendants' violation of

1 the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home Ownership
2 and Equity Protection Act, and the Arizona Consumer Fraud Act as alleged herein.
3

4 127. Upon information and belief, as an alternative to packaging and selling
5 Plaintiff Jonathan Robinson's loan, Defendants knew that the loan would be subject to
6 foreclosure as a result of Plaintiffs' inability to make payments on the Notes as the monthly
7 payment escalated during the term of the loan resulting in Plaintiff Jonathan Robinson's
8 inability to qualify for a refinance the loan at a later date after the payments began to
9 escalate because of changes in the interest rate.
10

11 128. Upon information and belief, Defendants knew that they would be unable to
12 modify Plaintiffs' loan into a payment plan Plaintiffs could afford.
13

14 129. Defendants intended that Plaintiff Jonathan Robinson would default on the
15 loan, and Defendants would be in a position of seizing the Residence in a foreclosure
16 action, depriving Plaintiffs of their Residence.
17

18 130. Defendants, and each of them, in furtherance of the conspiracy and
19 agreement alleged herein, acted in a concerted manner to target Plaintiff Jonathan Robinson
20 as a borrower, to misrepresent the loan terms and/or to misrepresent Plaintiff's qualification
21 for the loan, and to mislead Plaintiffs into relying on the potential of an affordable loan
22 modification that would never manifest, knowing that such action or actions would result in
23 Defendant's ultimate possession of the Residence following foreclosure.
24

25 131. The actions of the various Defendants were interrelated and could not have
been accomplished without the participation of all of the Defendants. The actions of all of
26

the Defendants were committed intentionally, willfully, wantonly and with reckless disregard for the rights of Plaintiff.

4 132. As a result of Defendants' conspiracy described herein, Plaintiffs have
5 suffered injuries which include mental anguish, emotional distress, embarrassment,
6 humiliation, loss of reputation and a decreased credit rating which has, or will, impair
7 Plaintiffs' ability to obtain credit at a favorable rates before the decrease in their credit
8 rating, the loss or anticipated loss of the Residence, and other financial losses according to
9 proof. Plaintiffs have incurred attorneys' fees and costs in this matter.

11 133. Defendants' conspiracy to unlawfully deceive Plaintiffs into the loan alleged
12 herein was willful, wanton, and justify an award of actual, compensatory and punitive
13 damages.

SEVENTH CLAIM FOR RELIEF

(Conspiracy To Commit Fraud Related To MERS System)

16 (As to Defendants MERS, Freddie Mac, Fannie Mae, GMAC Mortgage,
17 L.L.C., National City Mortgage, J.P. Morgan Chase Bank, N.A.,
18 CitiMortgage, Inc., Countrywide Home Loans, Inc., HSBC Mortgage
Corporation, U.S.A., Wells Fargo Bank, N.A., First American Title Insurance
Corporation, GE Money Bank, and AIG United Guaranty Corporation only)

19 134. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
20 set out in this claim.

135. Upon information and belief, Defendants MERS, Freddie Mac, Fannie Mae,
GMAC Mortgage, L.L.C., J.P. Morgan Chase Bank, N.A., CitiMortgage, Inc., Countrywide
Home Loans, Inc., HSBC Mortgage Corporation, Wells Fargo Bank, N.A., First American
Title Insurance Corporation, GE Money Bank, and AIG United Guaranty Corporation
(hereinafter in this Seventh Claim for Relief collectively referred to for purposes of this

1 Seventh Claim as "Defendant Conspirators"), and each of them, did knowingly and
2 willfully conspire and agree among themselves to engage in a conspiracy to promote,
3 encourage, facilitate and actively engage in fraudulent and predatory lending practices
4 perpetrated on Plaintiffs as alleged herein as part of the business policies and practices of
5 each of the Defendant Conspirators by their participation in the MERS system.
6

7 136. Upon information and belief, Defendant Conspirators, and each of them, are
8 or have been creators, originators and controlling shareholders in MERS and/or members of
9 the MERS system, and, as to Defendant Conspirators, Freddie Mac, Fannie Mae, GMAC
10 Mortgage, L.L.C., National City Mortgage, and J.P. Morgan Chase Bank, N.A., have,
11 through their employees and agents, a chartered seat on the Board of Directors of MERS,
12 and have participated in the design and coordination of the MERS system.
13

14 137. Upon information and belief, Defendant Conspirators have conspired among
15 themselves and with other unknown parties to:
16

17 a. Develop a system of earning profits from the origination and
18 securitization of residential loans without regard to the rights of Plaintiffs, and others
19 similarly situated, by engaging in predatory and deceptive residential lending practices as
20 alleged in this complaint above;

21 b. In furtherance of the system referred to immediately above, Defendant
22 Conspirators intentionally created, managed, operated, and controlled Defendant MERS for
23 the specific purpose of MERS being designated as a sham "beneficiary" in the original
24

1 deeds of trust securing those loans, including the loan made to Plaintiffs and other similarly
2 situated individuals;

3 c. Defendant Conspirators, and each and every one of them, intentionally
4 created, managed, operated and controlled the MERS system with the unlawful intent and
5 for the unlawful purpose of making it difficult or impossible for Plaintiffs and other victims
6 of such industry-wide predatory policies and practices to identify and hold responsible the
7 persons and/or entities responsible for the unlawful actions of Defendants WMC Mortgage
8 Corp., GE Money, MERS and their co-conspirators;

9
10 138. Upon information and belief, Defendant Conspirators, through creation of the
11 MERS system alleged herein, adopted and implemented a system of residential lending
12 underwriting guidelines for use in Arizona which was designed to, and did, generate
13 unprecedented profits for Defendant Conspirators and their co-conspirators, corporate
14 Officers and Directors, at the expense of Plaintiffs and other similarly situated persons that
15 Defendant Conspirators fraudulently induced into taking out residential loans on which
16 Defendant Conspirators and their co-conspirators knew that Plaintiffs and others like them
17 would likely default, and which would likely result in foreclosure. Defendant Conspirators
18 issued these loans with reckless disregard and with intentional indifference of the
19 likelihood of such foreclosure.

20
21 139. Upon information and belief, the MERS system was created to unlawfully
22 hide and insulate predatory loan brokers and originators from accountability and liability by

1 informing all lenders who originated loans naming MERS as the beneficiary of the
2 following:

3 a. MERS would never own or acquire any actual beneficial interest in
4 any loan in which it was named as beneficiary under the deed of trust, and that

5 b. MERS could be named as beneficiary for purposes of public notice
6 and notice to the borrower and would act in that capacity if so designated by the lender who
7 originated the loan.

8 140. Upon information and belief, Defendant Conspirators and their co-
9 conspirators' intent and purpose in the creation, management, operation and control of
10 MERS was, without limitation, to make it impossible for anyone, other than Defendant
11 Conspirators who created and controlled MERS, to identify the actual beneficial owner of
12 any loan or the property used as collateral to secure the loan until such time, if any, that a
13 foreclosure action was initiated. As a result, the identity of the actual beneficial owner
14 was intentionally hidden from Plaintiffs and other similarly situated individuals.

15 141. Upon information and belief, the creation of the MERS system by the
16 Defendant Conspirators, was dependent on fraudulent and deceptive practices that
17 included, but were not limited to, making loans to consumers such as Plaintiffs in violation
18 of the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home
19 Ownership and Equity Protection Act, and created a system to unlawfully deprive Plaintiffs
20 of Plaintiffs' interest in the Residence.

21
22
23
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25

1 142. As a result of the actions of Defendant Conspirators as described herein,
2 Plaintiffs have suffered injuries which include mental anguish, emotional distress,
3 embarrassment, humiliation, loss of reputation and a decreased credit rating that has, and
4 will, impair Plaintiff's ability to obtain credit at favorable terms, the loss or anticipated loss
5 of Plaintiff's Residence, and other financial losses according to proof. Plaintiffs have
6 incurred attorneys' fees and costs in this matter.
7

8 143. Defendant Conspirators' actions were wanton, willful and reckless, and
9 justify an award of punitive damages against Defendant Conspirators, and each of them.

EIGHTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)
(As to Defendants GE Money, WMC Mortgage Corp., Wells Fargo and MERS)

14 144. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
15 set out in this claim.

145. Defendant WMC Mortgage Corp.'s actions in targeting Plaintiff Jonathan
17 Robinson for a loan, misrepresenting the terms and conditions of the loan, negotiating the
18 loan, and closing the loan as alleged herein were intentional, reckless, wanton and willful.
19

20 146. Defendants actions as alleged herein were extreme and outrageous because of
21 the Plaintiffs vulnerability to the predatory lending practices described herein and because
22 the subject of the loan was Plaintiffs' primary residence, inherent with the characteristics of
23 providing shelter for Plaintiffs and a sense of pride and emotional security.
24

25 147. As a result of Defendants' actions alleged herein, Plaintiffs have suffered financial loss, endured the stress inherent in facing the loss of their Residence, and suffer

1 embarrassment and humiliation that results from Plaintiffs being put in the position of
2 defaulting on the loan. All of these factors have culminated to invade Plaintiffs' mental
3 and emotional tranquility and to cause Plaintiffs severe emotional distress.

5 148. Because of the extreme and outrageous nature of Defendants' actions as
6 alleged herein, and to deter such conduct in the future, Plaintiffs are entitled to an award of
7 punitive damages and such other relief as set forth below.

NINTH CLAIM FOR RELIEF
(Injunctive Relief)

**(As to Defendant Wells Fargo, MERS, ASC and
First American Title Insurance Company)**

11 149. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
12 set out in this claim.

13 150. Plaintiffs are faced with the clear and present danger of losing their
14 residence due to threatened foreclosure action at a trustee's sale as alleged herein.

16 151. Neither Defendants ASC nor MERS, Inc. nor any purported assignee of
17 MERS, Inc., is the proper beneficiary under the Notes and Deed of Trust, and neither is a
18 proper party to institute a foreclosure action or a trustee's sale.

19 152. Furthermore, Defendant First American Title Company failed to properly
20 record its interest with the County Recorder for Pima County prior to noticing two trustee's
21 sales of the Residence, the second of which is presently pending and scheduled for May 1,
22 2009. A.R.S. § 33-804 mandates that a Notice of Substitution of Trustee be recorded in
23 "each county in which the trust property or some part of the trust property is situated **at the**
24 **time of the substitution.**" A.R.S. §33-804 (C) [Emphasis added]. The Notice of
25

1 Substitution of Trustee appointing First American Title Company was not filed in the Pima
2 County Recorder's office until January 28, 2009, almost a month after the pending Notice
3 of Trustee's Sale was filed on December 31, 2008. Therefore, it logically follows that First
4 American Title recorded the impending Notice of Trustee's prematurely, and therefore the
5 Notice of Trustee Sale is ultimately invalid.
6

7 153. Plaintiffs will suffer irreparable harm if Defendants are not enjoined from
8 selling Plaintiffs' Residence at a foreclosure or trustee's sale, as Plaintiffs will lose
9 Plaintiffs' financial interest in the Residence, and Plaintiffs will have no adequate remedy
10 at law, because the Residence is unique.
11

12 154. Defendants will not suffer irreparable harm if the foreclosure sale or
13 trustee's sale is enjoined.

14 155. Plaintiffs are entitled to a temporary restraining order and a preliminary
15 injunction prohibiting Defendants, their agents, employees or servants from selling
16 Plaintiffs' Residence at a foreclosure sale or trustee's sale as described herein.
17

18 156. Plaintiffs have been required to retain counsel in this matter to protect
19 Plaintiffs' rights and have incurred attorneys' fees and costs in this matter.

20 **TENTH CLAIM FOR RELIEF**

21 **(Declaratory Relief)**

22 **(As to Defendants Wells Fargo, MERS, ASC and
First American Title Insurance Company)**

23 157. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
24 set out in this claim.
25

158. Plaintiffs seek a declaratory judgment against Defendants stating that Defendants violated Plaintiffs' rights under the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home Ownership and Equity Protection Act, the Fair Debt Collection Practices Act, and the Arizona Consumer Fraud Act.

159. Plaintiffs have been required to retain counsel in this matter to protect Plaintiffs' rights and have incurred attorneys' fees and costs in this matter.

CLASS ACTION ALLEGATIONS AND
REQUEST FOR CLASS CERTIFICATION

160. Plaintiffs incorporate each and every paragraph of this Complaint as if fully set out in this claim.

Class Definition

161. Plaintiffs, pursuant to Fed. R. Civ. P. 23(a), (b)(2-3), bring this action on behalf of a class of similarly situated individuals who obtained loans allegedly secured by residential real property located in the State of Arizona and whose loans were insured, securitized, guaranteed or funded by the Defendants, and where MERS and/or the MERS system was involved in any way with those loans, including the insurance, securitization, guarantee or transfer of a purported security and/or beneficial interest in such loans between January 2005 and the present. Excluded from the class are the Defendants, including any parent, subsidiary, affiliate or controlled person of the Defendants and their officers, directors, agents or employees, any judge or judicial officer assigned to this matter, and members of the immediate families of any excluded persons.

Numerosity

162. Upon information and belief, the class comprises not less than 125 individual members, and the membership in the class is so numerous that joinder of all members is impracticable. The members of the class can be identified and located using information contained in the Defendants' mortgage lending records.

Common Questions of Law and/or Fact

163. There are common questions of law and/or fact common to the class, including whether the Defendant GE Money through its subsidiary WMC Mortgage Corp. violated the Truth in Lending Act, the Home Ownership, Real Estate Settlement and Procedures Act, and Equity Protection Act, the Federal Fair Housing Act, as alleged herein, and whether any such violations constituted a conspiracy to commit fraud or conversion and/or whether Defendant's conduct constitutes intentional infliction of emotional distress on the class members. Also common to the class is the issue of whether the named Defendants acted as conspirators in committing fraud in the creation and origination of the MERS system as alleged herein.

Typicality

164. Plaintiffs' claims are typical of those of the members of the class. Plaintiffs and the class members were subjected to the same kind of unlawful conduct and the claims of Plaintiffs and the class members are based on the same legal theories.

1 **Fair and Adequate Representation of Class**

2 165. Plaintiffs will fairly and adequately protect the interests of the class Plaintiffs
3 represent. Plaintiffs' interests do not conflict with the interests of the class, and Plaintiffs
4 intend on prosecuting this action vigorously.
5

6 166. Plaintiffs have retained experienced counsel qualified in class action
7 litigation, and counsel is competent to assert the interests of the class.
8
9

10 **Rule 23(b) Requirements**

11 167. The unlawful acts of Defendants, as alleged herein, constitute a course of
12 conduct common to Plaintiffs and each class member. Prosecution of separate actions by
13 individual class members would create a risk of inconsistent or varying adjudications,
14 which would establish incompatible standards of conduct for Defendants and/or
15 substantially impair or impede the ability of the individual class members to protect their
16 interests.
17

18 168. Injunctive and/or declaratory relief to the class is appropriate because, upon
19 information and belief, Defendants, and each of them, have acted or refused to act on
20 grounds generally applicable to the class.
21

22 169. Questions of law and/or fact common to the class members, including the
23 issues identified above, predominate over questions affecting only individual class
24 members, and a class action is superior to other available methods for fair and efficient
25 adjudication of the controversy. Class action treatment will allow a large number of

1 similarly situated individuals to simultaneously pursue their common claims in a single
2 forum in an efficient manner, without unnecessary duplication of effort and expense that
3 would be required if numerous individual actions were pursued.
4

5 **WHEREFORE**, Plaintiffs pray this court enter an order providing relief as follows:

- 6 1. For award of damages against Defendants and each of them on Plaintiffs'
7 claims as applicable under federal law as alleged above in an amount to be shown at trial;
- 8 2. For an award of damages against Defendants, and each of them, on the
9 Plaintiffs' state law claims, whether general, special or punitive as alleged above, in an
10 amount to be shown at trial;
- 12 3. For an award of attorneys' fees and costs as provided by law;
- 13 4. For a temporary restraining order and preliminary and permanent injunction
14 prohibiting Defendants, their agents, servants and employees as specifically alleged above
15 from selling Plaintiffs' property at foreclosure and from proceeding with any foreclosure or
16 collection action against the Plaintiffs;
- 18 5. For a temporary restraining order and preliminary and permanent injunction
19 prohibiting Defendants, their agents, servants and employees as specifically alleged above
20 from transferring or accepting the transfer of any beneficial interest in, or rights to act as
21 Trustee under, any Deed of Trust which identified MERS as the "beneficiary" on any
22 residential property located within the State of Arizona;
- 24 6. For a temporary restraining order and preliminary and permanent injunction
25 prohibiting Defendants, their agents, servants and employees as specifically alleged above

1 from proceeding with any action to foreclose, to sell at a foreclosure or trustee's sale, or in
2 any other way to interfere with class members' peaceful use and possession of any
3 residential property located in Arizona that was the subject of a Deed of Trust which
4 identified MERS as the "beneficiary;"
5

6 7. For a temporary restraining order and preliminary and permanent injunction
7 prohibiting Defendants, their agents, servants and employees as specifically alleged above
8 from transferring any interest in any residential property in Arizona in which Defendants
9 acquired and/or hold title in the name of MERS or a MERS member, and in which MERS
10 had purported to transfer beneficial interest under a Deed of Trust prior to a foreclosure or
11 trustee's sale;

13 8. For a declaratory judgment holding that Plaintiffs' rights were violated as
14 alleged above;

15 9. That Plaintiffs have and recover from the Defendants pre-judgment interest as
16 may be determined by statute and rule;

18 10. That this action be certified as a Plaintiffs' class action; and

19 11. Pursuant to Federal Rules of Civil Procedure, Rule 38, Plaintiffs demand a
20 trial by jury on all issues of fact in this action; and

21 12. That this court grants such other and further relief as it deems just and proper.

23 //

24 ///

25 ///

1 **DATED** this 21st day of April, 2009.
2
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4

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6 **KOELLER, NEBEKER, CARLSON**
7 **& HALUCK, LLP**
8
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10 By William A. Nebeker
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10 William A. Nebeker, Esq.
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14 Lisa I. Streu, Esq.
15 *Attorneys for Plaintiff*
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DEMAND FOR JURY TRIAL

Pursuant to *Fed. R. Civ. P.* 38(b), Plaintiffs hereby demand a trial by jury to the fullest extent permitted by law.

DATED this 21st day of April, 2009.

**KOELLER, NEBEKER, CARLSON
& HALUCK, LLP**

By William A. Nebeker

William A. Nebeker, Esq.
Rosary A. Hernandez, Esq.
Gregory E. Williams, Esq.
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